

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH.

Provo Reservoir Company,
a corporation, Plaintiff,

VS.

Answer of Caleb Tanner.

Provo City, et al; Esthma Tanner
and Caleb Tanner, George Tanner
as Agents, Servants and Employees
of Esthma Tanner,
Defendants.

Comes now Caleb Tanner and answering the petition of J.M. Bonny
admits, denies and alleges as follows:

1. Admits that the above entitled Court on or about the 2nd day of May, 1921, made and entered a certain judgment in civil action number 2888 and that Esthma Tanner was a party to the said cause; he verily believes that the said judgment contains substantially the matters set out in the said petition as being therein contained, and admits that Esthma Tanner was found by the Court in the said cause to be the owner of certain water rights;

2. He denies the allegations contained in the said petition in paragraphs numbered 6, 7, 8, and 8-a of the said petition except as the same may be hereinafter stated, admitted, qualified or specifically denied; he admits that T.F. Wentz was appointed in the said cause by the Court as a Commissioner and that the said Wentz issued a ticket for the irrigation of certain lands of the said Esthma Tanner, which said lands are irrigated by ~~waters~~ from Provo River and Spring Creek;

3. He denies generally and specifically each and all the allegations of the said petition not herein admitted or alleged specifically herein as to the facts;

AS and for a further answer he alleges;

1. That Esthma Tanner is the owner of certain lands on Provo River which lands are irrigated with waters from Spring Creek and from Provo River, and that said lands are irrigated on a schedule of time from one T.F. Wentz as Commissioner of Provo River and he verily believes that the dates for such irrigation by ticket are as set forth in the said petition;

2. That the said Esthma Tanner is the owner of certain waters arising in springs and seeps on her said lands and of certain waters collected on her said lands by drains therein;

3. That she was decreed to be the owner of certain of such water rights in civil action 2888 in the above entitled Court and was further awarded a right in the said cause to use her said drain rights at points on Provo River away from her said lands where the said water arises; that it is specifically provided in the said judgment that such waters might be used above her said lands from Provo River so long as water from Provo River was required to pass her said lands for the use of lower appropriators; that she is the owner of such rights and may use the same at any and all times beneficially under the laws of this state either upon her said lands or elsewhere and may take from the said stream waters for irrigation purposes so long as she returns to the said stream or its tributaries water of the same amount and in the same quality.

4. That on the specific dates mentioned in the said petition to wit May 7, 25, 26 and 27th he was in the actual possession of the said lands of the said Esthma Tanner whereon the said drain and seepage water arises, and was personally operating the same through and with the assistance of one George Tanner.

5. That for the irrigation season of 1934 he had leased ^{or sold} certain water rights on Provo River to parties using water therefrom at a point or points on Provo River above the said lands of the said Esthma Tanner, and that he was using a part of the waters of the said drain as a substitution for waters so used; that on the dates in said petition and in the foregoing paragraph specifically referred to, there was more waters in the said drain and being discharged into Provo River and the said Lake Bottom Canal than ~~petitioner~~ ^{the undersigned} was using in connection with other rights of the said Esthma Tanner or of his own above the said lands of the said Esthma Tanner, which excess in the said drain was and is the property of the said Esthma Tanner and which was and is in the control of the undersigned in his operation of the said farm; that on the said dates there was used on the said farm certain waters for irrigation being a part of the flow of Spring Creek at the upper boundaries of the said lands of the said Esthma Tanner which waters without diversion would flow across the said farm and continue in the channel of Spring Creek to lower users; that for any and all such water used by him he returned at the lower extremity of the Tanner farm to the said Spring Creek or Lake Bottom Canal as the same may be called a quantity of water equal to or larger than the waters so diverted by him and which water was of as good quality for all or any purposes as the waters flowing in the said Spring Creek; that the water so returned to the said ditch was the personal property of the said Esthma Tanner and no one except herself or the undersigned was entitled to any use thereof the same being in excess of any and all demands then being made on said Provo River to supply the rights of said Esthma Tanner and persons to whom the undersigned had contracted the use of water from the said Provo River System; all of which was done on the property of the said Esthma Tanner and according to her legal rights in the premises, and which was neither wrongful as to any person, nor unlawful, nor contumacious with respect to the decree of the above entitled Court in said cause 2888 civil; that such use of the said water rights in no manner interfered with the rights of the petitioner nor with the rights of any other person whomsoever, nor with any schedule of use made by the said commissioner or otherwise; nor did the same conflict with any provision of the judgment of the above entitled Court in the said cause 2888 civil.

6. Petitioner further alleges that the said decree in the said cause 2888 nowhere in terms awards the whole of the waters of the said Spring Creek to a particular use at any time nor does any ticket of the said Commissioner purport to grant all of the waters of Spring Creek specifically to any person at any specific period; and that no tickets issued by the said River Commissioner at the time in question so provide to the knowledge of the undersigned;

7. That the said J. M. Bonny petitioner herein has not suffered any detriment by any act of the undersigned in the premises in making such use of waters on the lands of the said Esthma Tanner; and further alleges that the said J. M. Bonny is not beneficially interested in the prosecution of this action and proceeding within the meaning of the laws of the State of Utah which require the prosecution of action in the name of the real party in interest, and that the said J. M. Bonny is not the real or any party in interest as appears herein;

8. Petitioner further alleges that he has not done any act in the premises wrongfully or unlawfully nor against the direction of the said river commissioner or any requirement of said commissioner; and that no act done by him in the premises violates any provision of the said judgment, nor has he at any time acted in contempt of any order of the Court in the premises.

Wherefore the undersigned prays that the said petitioner take nothing by his action herein; that same be dismissed as to him and that he have judgment against the said petitioner for any costs by him herein expended.

Caleb Tanner

STATE OF UTAH)
COUNTY OF UTAH) SS

Caleb Tanner being first duly sworn, deposes and says; that he is the signer of the above and foregoing answer; that he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to matters and things stated therein on information and belief and as to such matters he believes it to be true.

Caleb Tanner

Subscribed and sworn to before me

this 8th day of June, 1934.

G. Sherman Christensen

Notary public; residing Provo, Ut.
My commission expires Apr. 10, 1937.



Received a copy of the foregoing, this 8th
day of June, 1934.

Watkins & Holbrook

#2888

IN DIST. COURT
UTAH CO., UTAH
FILED

JUN 9 1934

Frank A. [unclear]
[unclear]